

**REMARKS**

Claims 1-9, 11, and 13-15 are pending. Claims 1-9, 11, and 13 are herein cancelled.

Claim 14 has been amended. Support can be found in the Specification on page 10, line 17.

No new matter has been added.

**Claim Rejections – 35 USC § 102**

The Examiner has rejected claims 2, 4, 7, 9, and 13-15 as anticipated by Higashiyama *et al.* in view evidence given by Gilbertson. The Examiner includes claims 3 and 8 in the body of the rejection but not in the initial statement of rejection. The Examiner contends that Higashiyama *et al.* disclose the use of arachidonic acid in soup, meat, fried rice, mayonnaise and processed soy curd and contends that the taste of these foods is enhanced. The Examiner also contends that Higashiyama *et al.* teach production of arachidonic acid from microorganisms which is used in various food compositions. Applicants respectfully traverse.

As a preliminary matter, Applicants note that claims 2-4, 7-9 and 13 have been cancelled. Thus the rejection is moot as to those claims.

With regard to claims 14 and 15, Applicants respectfully traverse.

The present claims recite a method for enhancing body taste of foods, comprising heat-cooking the foods with fat and oil prepared by adding or mixing an n-3 long-chain highly unsaturated fatty acid having 20 or more carbon atoms and 3 or more double bonds, or an n-6 long-chain highly unsaturated fatty acids having 18 or more carbon atoms and 3 or more the double bonds with vegetable fat and oil, wherein the fat and oil comprises 10 – 100,000 ppm n-3 long-chain highly unsaturated fatty acid or 10-100,000 ppm n-6 long-chain fatty acid.

Higashiyama *et al.* “teach about production of arachidonic acid from microorganism[s] and used in various food compositions. . . . Higashiyama et al., teach about heat-cooking the foods with the oils having arachidonic acid” (Office Action, pages 3-4). Higashiyama *et al.* also teach that the oil obtained from the microorganism should have at least **20% by weight** arachidonic acid content (Higashiyama *et al.*, col. 2, lines 60-63; col. 3, lines 15-17). The refined oils generated in Higashiyama *et al.* have as much as 43 % by weight arachidonic acid in

the oil (Higashiyama *et al.*, col. 11, Table 3). Higashiyama *et al.* teach that the high content of arachidonic acid in the oil is high in arachidonic acid, which Higashiyama *et al.* disclose is needed in infants to avoid encephalopathy and minor impairments of the cranial nerve in infants, and as foods for pregnant women and nursing mothers (Higashiyama *et al.*, col. 1, lines 33-37, lines 50-52, col. 5, lines 58-60).

In contrast, in the presently claimed methods only **up to 10%** arachidonic acid is recited (100,000 ppm= 10%). For at least this reason, Applicants submit that Higashiyama *et al.* do not disclose every feature of the claimed invention, as is required to establish a *prima facie* case of anticipation.

Furthermore, should the Examiner believe that an obviousness rejection is applicable, Applicants submit that the presently claimed methods are not obvious in view of Higashiyama *et al.* because Higashiyama *et al.* teach away from the amount of arachidonic acid recited in the claims.

Specifically, Higashiyama *et al.* explicitly teach that the amount of arachidonic acid in the oil is necessary for the oil to be effective. Modifying Higashiyama *et al.* to have a lower amount of arachidonic acid would defeat the stated purpose of using arachidonic acid in Higashiyama *et al.*, and would render the oil inoperable. Accordingly, Applicants submit that an obviousness rejection should not be applied.

Even further, Applicants submit that an oil having high amounts of arachidonic acid does not taste as good as oils having an amount of arachidonic acid falling within the claimed range. As shown in the Specification in Example 17, an oil having 12 % arachidonic acid (oil number (6) on page 27) was compared to oils having amounts of arachidonic acid falling within the claimed range (0.01 %-10%, oils (2)-(5) on page 27). As shown in Table 20, oil 6 had an aroma that was much stronger and worse than the control, a flavor and taste that was much stronger and worse than the control, and an aftertaste that was much stronger and worse than that of the control. Thus, an oil which has more arachidonic acid than the oils of the claimed methods leads to a strong bad taste.

Higashiyama *et al.* say nothing about the flavor of oils imparting any type of flavor, let alone a good flavor. Therefore, one of skill in the art would have no reason to modify

Higashiyama *et al.* to decrease the amount of arachidonic acid, especially since the amount of arachidonic acid is why Higashiyama *et al.* suggest adding it to food, *i.e.* to actually effect its advantages in formula for infants, *etc.*

For at least these reasons, Applicants submit that an obviousness rejection should not be applied to the presently claimed methods.

In view of all of the above, Applicants submit that the claims are novel and request removal of the rejections.

#### Claim Rejections – 35 USC § 103

The Examiner has rejected claims 1, 2, 4-7 and 9-12 as obvious over Chen in view of Gilbertson. Applicants note that these claims have been cancelled. Thus, the rejection is moot. Applicants respectfully request removal of the rejection.

The Examiner also rejects claim 3 as being obvious over Remacle (U.S. 7,572,475). Again, claim 3 has been cancelled. Thus, the rejection is moot. Applicants respectfully request removal of the rejection.

The Examiner rejects claim 8 as being obvious over Higashiyama *et al.* in view of Remacle *et al.* and Gilbertson. Claim 8 has been cancelled. Thus, the rejection is moot. Applicants respectfully request removal of the rejection.

#### Conclusion

In view of the above remarks, all of the claims are submitted as defining non-obvious, patentable subject matter. Reconsideration of the rejections and allowance of the claims are respectfully requested. Applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Susan W. Gorman Reg. No. 47,604 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

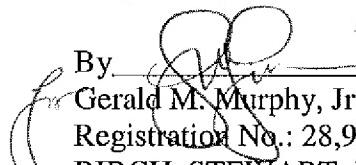
Application No. 10/578,223  
Amendment dated February 22, 2011  
Reply to the Office Action of November 19, 2010

Docket No.: 4600-0121PUS1

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: February 22, 2011

Respectfully submitted,

By  #47,604  
Gerald M. Murphy, Jr.  
Registration No.: 28,977  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
12770 High Bluff Drive  
Suite 260  
San Diego, California 92130  
(858) 792-8855  
Attorney for Applicants